DR. NKOSAZANA DLAMINI ZUMA MUNICIPALITY

DRAFT

CREDIT CONTROL AND DEBT COLLECTION POLICY

1. DEFINITIONS

2. INTRODUCTION

2.1 In terms of the Bill of Rights, everybody has the right of access to certain municipal services. A local authority can therefore not refuse a person his/her constitutional rights on the basis that he/she constitutes unacceptably high credit risk. It is in any even, not in the spirit of transformed local government in South Africa to exclude people from basic services, especially those residents in the long-neglected communities.

2.2 However, it is in nobody's interest that these basic rights be abused (for example, by not paying or abusing usage). A national disaster could follow in the wake of a general collapse in local government. The right of access to basic services should be protected but, on the other hand, local government should be given protection against abuse.

2.3 The Constitution states in section 152 (1)(b), that local government must strive within its financial and administrative capacity, to ensure the provision of services to communities in a sustainable manner.

2.4 Services should be rendered within the following eight principles, as outlined in the White Paper on Transforming Public Services:

a) Consultation with community;
b) Agreement on service standards;
c) Equal access to services
d) Courtesy in rendering of services;
e) Provision of information to all
f) Openness and transparency regarding cost of services;
g) Communities' right to redress; and
h) Value of money

2.5 The above could only be realized if local government obtains sufficient revenue to fund its activities and tasks in order to provide services.

2.6 Presently, local revenue comes from two sources, namely;

a) Own generation through taxes, levies and tariffs.
b) An equitable share of revenue raised nationally in terms of section 214 and 227 (1)(a) and (b) of the Constitution.

2.7 Section 227 (2), of the Constitution also states that additional revenue raised by the municipalities may not be deducted from their equitable share of revenue raised

nationally or from any other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.

2.8 The National Credit Control Guidelines issued by the Department of constitutional development on 13th March 1998, expresses the following concerns:

a) Tariffs in many cases are not cost reflective, and therefore the true potential debtors are substantially reduced;
b) Extending service delivery to the low-income communities in the form of basic service, without accompanying improvement in economic circumstances, will increase the negative result;
c) In many cases, amalgamation has placed immense pressure on the municipal administrative structures. Adjustments to accommodate the changed circumstances may be lagging in favor of showing progress with service delivery;

2.9 Lenient approach to debtors, in terms of extended payment periods, is contributing to the debtors' accumulation and is not producing any improvement to the situation on the ground or to substantial cash inflows.

2.10 It is therefore critical that municipalities make every effort to collect all the revenues due to them. An effective credit control and debt collection policy is an important tool to enable municipalities to collect revenues due.

3. BACKGROUND

3.1 The Municipality has inherited a massively increased population that it must serve in the face if a culture of non-payment of taxes and tariffs by residents.

3.2 Combined with service backlogs, collapsed and deteriorating infra-structure and deteriorating credit worthiness, municipalities are experiencing financial stress, and in some instances crisis. The deterioration of infra-structure and service levels then becomes part of a downward spiral as more residents withhold payment leading to further deterioration.

3.3 In the absence of a clear and standardized credit control and debt collection policy, municipal officers are left on their own trying to recover debts without, or very limited, support in the face of, quite often, well organized resistance. This invariably leads to

a situation where outstanding debts are not recovered leading to the financial collapse of the Municipality.

3.4 In order to fulfill its Constitutional responsibilities and render services based on the principles outlined in point one above, it is imperative for the Municipality to optimally exploit its own revenue sources.

4. CREDIT CONTROL PRINCIPLES

4.1 The following principles should be considered;

a) Enforcement is a local matter subject only to relevant legislation,
b) The municipal manager who is entrusted with the determination and execution of credit control measures must report to the municipal council;
c) Enforcement and policy-making must be independent to ensure accountability;
d) Credit control must be understandable, uniform, fair and consistently applied;
e) Credit control must be effective, efficient and economical;
f) The credit control measures employed must be sustainable in the long term; and
g) A proper indigence policy must be in place to ensure that the circumstances of the poor are accommodated.

5. FACTORS THAT AFFECT THE IMPLEMENTATION OF AN EFFECTIVE CREDIT CONTROL SYSTEM

5.1 Lack of administrative capacity to implement credit control within municipalities;
5.2 Lack of political support and commitment from councilors;
5.3 Poor and inefficient accounting systems adopted by some municipalities resulting in inaccurate financial reports and incorrect statements;
5.4 Lack of financial resources throughout the payment collection system;
5.5 Insufficient customer pay points established;
5.6 Non-existence of a policy on indigent.

6. KEY ELEMENTS OF CREDIT CONTROL POLICY

6.1 <u>Billing/Invoicing</u>

Billing refers to the process of preparing and presenting a claim or invoice to each consumer which is based on the quantity of service which is consumed by, and delivered to the consumer in a specified time. Interest will be levied on overdue accounts at the rate of 18% per annum. In addition a 10% collection charge will accrue two months after the said date.

6.2 Arrear Collection

a) Arrear collection, commonly known as credit control in local government, refers to the process of recovery of outstanding amounts from customers by taking the necessary steps and actions which include among other, interruption of services, litigation and attachment of assets.
b) Consumers shall not be entitled to interest on deposits lodged with municipality.
c) Upon termination of the consumer agreement with the municipality, the deposit shall first be offset against any outstanding balances and the remaining balance of the deposit (if any), refunded to the consumer.

7. RENDERING OF ACCOUNTS

7.1 The municipality shall render a regular account for the amount owing by a debtor for rates, fees and service charges but failure by the municipality to render such accounts shall not absolve the debtor of his obligation to pay for rates, fees and/or services received.

7.2 Accounts must show the following:

a) If flat rate, the amount due in terms of services rendered;
b) The amount due for other services rendered;
c) Other amounts due;
d) The amount due for property tax
e) The final date for payment of amount due

8. CREDIT CONTROL PROCEDURE

8.1 If payment for the amount due is not received by the municipality by the due date, then the following procedure shall be instituted:

a) Posting or delivering of a final notice to the debtor demanding payment within seven (7) days of the date of notice;
b) The final notice shall contain the following information;
   (i). Final date for payment to be made;
   (ii). Total amount due for payment;

8.2 At this stage, the procedure for collection of arrears shall be instituted against debtor.

9. PROCEDURE FOR COLLECTION OF ARREARS

9.1 Arrangement for payment of arrears should be made as follows but only after an acknowledgement of Debt (the agreement), has been signed by the debtor who should provide positive proof of identity or an authorized agent with Power of Attorney.

9.2 The agreement must be completed entailing details of all arrangements for paying off arrear account as set out below. A copy of the agreement must be handed to the client and a copy filed in the debtor's file by the CFO.

9.3 The CFO shall decide on an arrangement to settle the balance in equal installments over a maximum period of twelve months. Should the extent of the amount owing be such that repayment cannot be effected as set out above, the matter shall be referred to the Council with a recommendation from the MANCO for an extended period on condition that the recommended period does not exceed 36 months,

9.4 The first payment (initial payment) to be made after the signing of the agreement shall be made within 30 days. Agreement will lapse if first payment is not received within 30 days.

9.5 No interest will be charged on arrear amount from the time the agreement is entered into provided that the agreement is honored by the debtor.

9.6 The CFO when notified by a debtor of his failure to comply with the arrangement, shall consider the merit of the debtor's circumstances in reviewing the arrangement. This could result in either an extension of the period of repayment; or increase the monthly repayments to maintain the repayment period, or temporarily freeze repayments until the debtor's circumstances improve provided the debtor keeps the CFO informed on a monthly to month basis of his circumstances.

9.7 The CFO in conjunction with the Municipal Manager shall either consider freezing further services or allowing the services to continue for a limited period to be agreed upon depending upon the circumstances. Merit cases must be dealt with individually and could amongst others include the following categories:

a) Unemployed persons
b) Deceased estates

c) Liquidated companies or CC's
d) Private persons under administration
e) Pensioners
f) Indigent person

9.8 Any of the above arrangements will automatically include the condition that all future monthly accounts are paid by the debtor on due date except in case of merit which will be at the discretion of the CFO.

9.9 A debtor who fails to comply with any of the above arrangements without notifying the CFO, automatically forfeits the benefit of the arrangement. A "refer to drawer" Cheque shall be regarded as a failure to comply.

9.10 No person will be allowed to enter into a second agreement if the first agreement was dishonored.

9.11 The CFO is not obliged to notify the debtor of the failure to comply.

9.12 Should a debtor not settle his/her account in full, after having made the arrangements, fail to comply with the arrangements, Council shall take all necessary legal steps to recover amount owing including such as attachment of the debtor's assets as per the litigation Procedure.

9.13 In terms of the Magistrate's Court Act No. 32 of 1944 (as amended) and/or listing with credit bureau.

10. RIGHT OF ACCESS

Municipal officials have the right of access to any property occupied by a consumer for the purposes of reading or inspecting meters or connections or to disconnect, discontinue or restrict supply of service and for the evaluation of the property.

11. RIGHT OF APPEAL

11.1 An appeal must be submitted to the Accounting Officer prior to the final due date of the contested amount, and must contain details of the specific items, on the account which

are the subject of appeal, with full reasons. The debtor's obligation to pay that portion of the total amount due represented by the items appealed against, is suspended until the appeal has been finalized. The debtor must, however, immediately pay the balance of account together with an amount representing the average cost of the item appealed against over the preceding three months, or an amount determined by the Accounting Officer.

11.2 Whilst the appeal of the debtor is being dealt with, any further amounts accruing for services rendered to the debtor, shall be payable on due date.

12. RESPONSIBILITY FOR CREDIT CONTROL

12.1 In terms of chapter 6, section 29 (d) (1), of the Municipal Finance Management Bill, 2000, of the Municipal Finance Management Bill, 2000, the Municipal Manager must take effective and appropriate steps to collect all moneys due to the Municipality.

12.2 The Local Government Transitional Act determines in Section 10G (2) that, "if a person who is in the employ of the Municipality causes or caused the Municipality a loss or damage because he/she failed to collect money owing to the Municipality for the collection of which he/she was responsible, the Accounting Officer, or if the Accounting Officer was responsible for such loss or damage, the Council, shall determine the amount of such loss or damage and take disciplinary action where and in appropriate cases recover the loss or damage.

12.3 If any undue interference by a Council or Councilors inhibits the Accounting Officer from executing his/her responsibilities, he/she should report this to the relevant MEC in terms of section 10H (4) of the Local Government Transition Act.

13. FINANCIAL IMPLICATIONS

Implementation of the credit control policy has to be financed from the operating budget of the Municipality. If this has an incremental impact on the budget, it should be offset by the improved cash flow as a result of an efficient collection system.

14. PERSONNEL IMPLECATIONS

Where credit control function does not exist in the Municipality, the responsibility of the function rests with the CFO who should ensure that the function is properly delegated to a responsible official.

15. INDIGENT SUPPORT POLICY

15.1 Indigents are defined as those people, who due to a number of factors, are unable to make a full monetary contribution towards basic services.

15.2 Typical examples are, pensioners, students, unemployed, disabled persons etc.

15.3 Municipalities are expected to institute an indigent support policy that will on an individual basis, subsidize those who are unable to pay the full charges for the services rendered to them.

16. POLITICAL SUPPORT

It is clear that without good Administrative processes, good communication and an earnest attempt to change the culture of non-payment and very importantly, total “buy in” from all politicians, no credit control policy will be effective.

17. RECOMMENDED CONTROL/WORKING DOCUMENTS.

17.1 Dependent upon the systems adopted by Council to implement the above policy, the following forms letters or documents are listed as a guide:

a) Indigent support application form
b) Acknowledgement of debt form
c) Fee structure document (penalties, service fees ETC)
d) Credit control monthly planner
e) Register to record “arrangements for payment”

ANNEXURE.

Annexure A Litigation Procedure

LITIGATION PROCEDURES (SIMPLIFIED), IN TERMS OF THE MAGISTRATE'S COURT ACT NO 32 OF 1944 (AS AMENDED, HEREIN AFTER REFFERRED TO "THE ACT")

1. LETTER OF DEMAND

Produce registered letters of demand, for the payment within 14 days from the date of the letter, to the domicillium citandi executandi of all debtors' accounts in arrears.

ALL COSTS OF LITIGATIGATION ARE TO BE DEBITED TO THE ACCOUNT OF THE DEBTOR

2. ARRANGEMENT FOR EXTENSION OF PAYMENT

In terms of section 57 of "the Act", a person may acknowledge and undertake to pay any debt in instalments or otherwise. This in turn empowers the creditor to obtain judgment and emoluments attachment order, garnishee against the debtor, without having issued summons, provided that a registered letter of demand and a letter of acceptance by the creditor of such acknowledgement and undertaking has been forwarded to the debtor.

3. DEFAULT JUDGEMENT

When a matter is undefended within 5 days from issue of summons, an application for default judgment is made.

The application is prepared and the original summons and return of service is attached to the application and taken to the clerk of the court in order to obtain judgment by magistrate. Once default judgment is obtained from the magistrate, the original documentation is filed at Court and duplicate of judgment returned to the plaintiff.

4. WARRANT OF EXECUTION

Documentation may be prepared simultaneously with default judgment in order to save time and documentation is also then returned to the plaintiff.

5. ATTACHMENT

Sufficient copies of the warrant of execution are to be attached to the original for service on each defendant by sheriff. The Sheriff serves and attaches movable property and the plaintiff receives a return of service and inventory of goods attached, or returns a “Nulla Bona” service.

A notice to remove attached property is then given to the sheriff who will then remove and store movable goods on request. If goods sold in execution do not cover the amount owed, or “Nulla Bona” return on warrant of execution of movable property is received. In the case of immovable property, sufficient copies of the Warrant of Execution, describing the immovable property, are to be attached to the original document, for service by the sheriff, on the Registrar of Deeds, the Bondholder, Local Authority and Defendant/s of such attachment of immovable property after which the Sheriff will supply “Returns of Service”.

6. SALE IN EXECUTION

6.1 MOVABLE PROPERTY

Notice of date of sale is prepared in conjunction with- and submitted to the sheriff, three weeks prior to the date of sale.Should the goods attached exceed the amount of R3000, as currently prescribed in “The Act”, a notice of sale in execution must be published in the press.

6.2 IMMOVABLE PROPERTY

Notices of date of sale is prepared in conjunction with the sheriff, and published in the press.

7. SECTION 65 PROCEEDINGS-TO BE DEALT WITH BY MUNICIPAL ATTORNEY

Once default judgement is obtained and a warrant of execution produces a “Nulla Bona” return of service, and a Deeds search reveals that a defendant owns immovable property, proceeds with section 65 of “The Act” by sending registered notice in terms of section 65, notifying the defendant of the financial enquiry at court.

The Policy shall come to effect upon approval by Council of Dr Nkosazana Dlamini Zuma Local Municipality.

8. POLICY ADOPTION

This Policy is adopted and approved by the full Council of Dr. Nkosazana Dlamini Zuma Local Municipality for implementation as follows.

Resolution Number_____

Approval Date _____